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09/978,477	10/16/2001	Frank Wheeler	MKM1	5146

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EXAMINER

VARNER, STEVE M

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 06/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/978,477

Applicant(s)

WHEELER ET AL.

Examiner

Steve M Varner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 3/17/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 1,3,8-10,17 and 21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-37 is/are allowed.
- 6) ☒ Claim(s) 2,4-7,11-16,18-20 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 1, 3, 8-10, 17, 21, are cancelled

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 16, line 25, "operatively adaptively substantially," is indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 4-7, 11, 12, 16, 18-20, 22-25, are rejected under 35 U.S.C. 102(b) as being anticipated by Gee.

Regarding claim 16, the first and second members are not positively claimed; therefore, the relationships of the clip to the first and second member need not be found. Gee shows a planar base plate (3) comprising a first surface and an opposing second surface and a guide (2) depending from the base plate comprising a first arm (6) extending along a longitudinal axis substantially transverse to the base plate from a proximal end adjacent the second surface and a second arm (8) extending away from

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the base plate oriented in the same direction as the first arm and proximally adjacent the base second surface, the arms comprising bearing surfaces defining opposing sides of the channel (5) wherein a slot (9) is defined in at least one of the arms along the longitudinal axis.

Regarding claims 2, 4-7, 11, 12, 18-20, 22-25, the first and second members are not positively claimed; therefore, the relationships of the clip to the first and second member need not be found. Gee shows a base (3) comprising a first surface and an opposing second surface and a guide (2) depending from the base comprising opposing arms (7, 8) extending substantially transversely to the base second surface defining a channel. Gee shows the base has a planar first surface and an opposing second surface and wherein the guide opposing arms comprise a first arm (6) extending along a longitudinal axis substantially transverse to the base from a proximal end adjacent the second surface, and a second arm (8) extending away from the base oriented in the same direction as the first arm. Gee shows a guide (2) defining an opening (9) in at least one of the arms, which is slotted. The clip is unitary. (Fig. 2)

***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Gee.

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Gee shows the basic claimed structure. Gee does not show indicia in the form of an alignment mark or shaker tab indicating a nominal position of the retainer. Indicia in the form of an alignment mark or shaker tab indicating a nominal position of the retainer are well known in the art. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use indicia since this would indicate the nominal position of the retainer.

### ***Allowed Claims***

Claims 26-37 are allowed.

Claims 26, 31, 35, 36, are allowed for a first track, a second track, a plurality of studs, a clip, and a fastener.

Claims 27-30 depend from claim 26 and are therefore allowed.

Claims 32-34 depend from claim 31 and are therefore allowed.

Claim 37 is allowed for the arms being noncoplanar.

### ***Response to Arguments***

Applicant's arguments filed 3/17/03 have been fully considered but they are not persuasive.

Applicant argues that Gee '976 would not perform the intended use.

Gee '976 meets the structure of the applicant's invention as claimed in claim 2. Since Gee '976 meets the structure, it can inherently perform the intended use.

Applicant argues that Gee '976 does not meet the limitation of, "bearing surfaces defining opposing sides of the channel to operatively adaptively substantially span the second member."

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"To operatively adaptively substantially span the second member," is functional language, and as noted since Gee meets the claimed structure it must inherently be able to perform the same function.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wynar presents a corner construction and wallboard backer bracket therefore. Quillin teaches a clip for retaining adjacent panels in a planar relationship. Swanquist shows a device for attaching electrical boxes to metal studding.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV  
June 2, 2003



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600